

SS#2 SCS HCS HB 111 -- JUDICIAL PROCEDURES

This bill changes the laws regarding judicial procedures.

TRANSPARENCY IN PRIVATE ATTORNEY CONTRACTS ACT (Sections 34.376, 34.378, and 34.380, RSMo)

The bill establishes the Transparency in Private Attorney Contracts Act which:

- (1) Prohibits the state and any of its agents from contracting with a private attorney for a contingency fee unless the Attorney General makes a written determination prior to the contract that the contingency fee representation is both cost effective and in the public interest;
- (2) Requires the Attorney General to request written proposals from private attorneys to represent the state if the determination to contract with a private attorney is made unless the Attorney General determines and puts in writing that requesting proposals is not feasible under the circumstances;
- (3) Requires the Attorney General to select the lowest and best bid or to request the Office of Administration to establish an independent panel to evaluate the proposals and choose the lowest and best bid;
- (4) Requires the government attorney to retain complete control over the course and conduct of the case and the contracted attorney in any contingency fee contract and requires the Attorney General to include provisions in the contract detailing the expectations of both the contracted attorney and the state;
- (5) Requires a copy of any contingency fee contract, the Attorney General's written determination, and payments of contingency fees to be posted on the Attorney General's web site;
- (6) Requires a private attorney under contract with the state on a contingency fee basis to maintain detailed records of his or her services, expenses, and fees, including time records in increments of no greater than 1/10 of an hour for at least four years after the expiration or termination of the contract. Any request under the Open Meetings and Records Law, commonly known as the Sunshine Law, for inspection and copying of records must be served upon and responded to by the Attorney General's office; and
- (7) Requires the Attorney General to annually submit a report by February 1 to the President Pro Tem of the Senate and the Speaker of the House of Representatives describing the use of contingency

fee contracts with private attorneys in the preceding calendar year and specifies the information which must be included in the report.

HOSPITAL DISTRICT SALES TAX (Sections 144.032 and 205.205)

The governing body of any hospital district in Iron County is authorized to impose, upon voter approval, a local sales tax of up to 1% in lieu of a property tax to fund the hospital district. The Department of Revenue will deposit the sales tax in the newly created Hospital District Sales Tax Fund less 1% of the amount collected which is to be deposited into the General Revenue Fund for the cost of collecting the sales tax. The tax will be imposed on all retail sales and all sales of metered water services, electricity, and electrical current and for the domestic use of natural, artificial, or propane gas; wood; coal; or home heating oil.

ELECTRONIC MONITORING (Sections 221.025, 544.455, 544.470, and 557.011)

The bill allows a judge to release a person before trial on electronic monitoring or to order a person to serve part or all of a sentence of confinement on electronic monitoring. All costs associated with electronic monitoring will be charged to the person on house arrest. If the judge finds the person unable to afford the associated costs, the judge cannot order the electronic monitoring. A circuit court may adopt a local rule authorizing the pretrial release of certain offenders on electronic monitoring in lieu of incarceration.

A judge may credit any period of electronic monitoring against any period of confinement or incarceration ordered; however, an individual on electronic monitoring will not be considered to be in custody or incarceration for purposes of eligibility for MO HealthNet benefits or considered confinement in a correctional center or jail for purposes of determining responsibility for the individual's health care.

A court may not place an individual on electronic monitoring in lieu of the required imprisonment, community service, or court-ordered treatment program involving community service if that individual is a prior, persistent, aggravated, or chronic offender sentenced pursuant to Section 577.023.

CERTAIN MISDEMEANOR VIOLATIONS (Sections 302.020, 302.321, 303.025, and 311.325)

The bill changes the specified class of certain misdemeanor violations to only be a misdemeanor violation and establishes

finances and penalties for a violation of the provisions regarding:

- (1) Driver's licenses;
- (2) Motorcycle licenses;
- (3) Driving while revoked;
- (4) Motor vehicle financial responsibility; and
- (5) Purchase, possession, or consumption of alcohol by a minor.

A prior plea of guilty and a prior finding of guilt must be pled and proven in the same manner as a person is found to be a prior, persistent, dangerous, persistent sexual, or predatory sexual offender.

CORPORATE COMMITTEE MEETINGS (Section 351.340)

The bill allows actions required to be taken at corporate committee meetings to be taken without a meeting if all of the board or committee members consent by electronic transmission. The transmissions must be filed with the meeting minutes.

CHILD SUPPORT AWARDS (Section 452.340)

The Missouri Supreme Court is required to amend the child support guidelines to address instances where there is an award of equal or substantially equal joint physical custody.

The court may award child support in an amount that provides up to a 50% adjustment below the basic child support amount for a custody award of joint physical custody where the child or children spend equal or substantially equal time with both parents.

FULL ORDERS OF PROTECTION (Section 455.007)

The bill specifies that, regardless of any other provision of law to the contrary, the public interest exception to the mootness doctrine will apply to an appeal of a full order of protection which has expired and which subjects the person against whom the order is issued to significant collateral consequences by the mere existence of the order after its expiration.

GUARDIANSHIP OF AN INCAPACITATED PERSON (Sections 475.060 and 475.061)

The bill changes the specified information that must be stated in a petition for a person to appoint himself or herself or another

qualified person as the guardian of an incapacitated person.

TRANSFER REQUESTS OF COURT CASES BY PUBLIC ADMINISTRATORS (Section 475.115)

The bill allows a public administrator to request the transfer of any case to the jurisdiction of another county by filing a petition for transfer and requires the court to transfer the case if the requirements for venue are met and the administrator of the receiving county consents to the transfer. The receiving county court must appoint, without the necessity of a hearing, its public administrator as successor guardian and/or successor conservator and issue the appropriate letters. In the case of a conservatorship, the final settlement of the public administrator's conservatorship must be filed in the original county within 30 days of the transfer and forwarded to the receiving county upon audit and approval.

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT (Sections 475.501 - 475.555)

The bill authorizes Missouri to enter into the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act which:

- (1) Allows a court to treat a foreign country as if it were a state for the purpose of applying certain provisions of the act;
- (2) Allows a court to communicate with an out-of-state court concerning a guardianship or protective proceeding;
- (3) Allows a court to request an out-of-state court to:
 - (a) Hold an evidentiary hearing;
 - (b) Order an individual to produce evidence or give testimony;
 - (c) Order that an evaluation or assessment be made of a respondent;
 - (d) Order any appropriate investigation of an individual involved in a guardianship or protective proceeding;
 - (e) Forward to the court of this state a certified copy of the transcript or other record of an evidentiary hearing or any other proceeding, any evidence otherwise produced, and any evaluation or assessment prepared in compliance with a court order;
 - (f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the

incapacitated or protected person; and

(g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including specified protected health information;

(4) Allows testimony taken in another state from a witness who is located in another state to be offered by deposition or other means allowable in this state;

(5) Permits a court to allow a witness located in another state to be deposed or to testify by telephone, audiovisual, or other electronic means;

(6) Specifies when a court of this state has jurisdiction to appoint a guardian or to issue a protective order for a respondent;

(7) Specifies that when a court of this state is otherwise lacking jurisdiction it has special jurisdiction for specified guardianship actions;

(8) Specifies that a court which has appointed a guardian or issued a protective order has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own term;

(9) Allows a court to decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum;

(10) Allows a guardian or conservator to petition the court to transfer the guardianship or conservatorship to another state;

(11) Specifies that if a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian may register, after giving notice to the appointing court of an intent to register, the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, a certified copy of the order and letter of office;

(12) Specifies that if a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator may register, after giving notice to the appointing court of an intent to register, the protective order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, a certified copy of the order and letter of office and of any bond; and

(13) Specifies that upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except those powers prohibited under the laws of this state.

BASIC CIVIL LEGAL SERVICES FUND (Section 477.650)

The bill extends the expiration date of the provisions regarding the Basic Civil Legal Services Fund from December 31, 2012, to December 31, 2018.

STANDARDS FOR REPRESENTATION OF CHILDREN BY GUARDIANS AD LITEM (Section 484.350)

The bill requires the Missouri Supreme Court standards from September 17, 1996, regarding representation of children by guardians ad litem to be updated.

CONDEMNATION PROCEEDINGS (Section 523.040)

The bill requires that in St. Louis City and the counties of St. Louis and Jackson at least one of the three commissioners appointed by the court in condemnation proceedings must be a licensed real estate broker or a licensed or certified real estate appraiser.

SEXUAL CONTACT WITH A STUDENT (Section 566.086)

Currently, a person who works for or volunteers at a school commits the crime of sexual contact with a student while on public school property, a class D felony, if he or she has sexual contact with a student while on any public school property. The bill removes the requirement that the crime be committed while on public school property and adds an elected or appointed official of the school district to the list of individuals to whom the provision applies.

SEXUAL OFFENDERS (Sections 566.147 and 589.040)

Currently, any person who, since July 1, 1979, has pled guilty or nolo contendere to, been convicted of, or been found guilty of certain specified sexual offenses is prohibited from residing within 1,000 feet of certain public schools, private schools, or child care facilities. The bill specifies that a child care facility includes any licensed child care facility or any facility which is exempt from licensure but subject to state fire, safety, health, and sanitation inspections and holds itself out to be a child care facility.

The bill also requires a person incarcerated for a sexual assault offense to successfully complete the treatment, education, and rehabilitation program provided by the Department of Corrections prior to being eligible for parole or conditional release.

CRIMINAL NONSUPPORT (Section 568.040)

A person commits the crime of nonsupport if he or she knowingly fails to provide adequate support for his or her spouse or child as he or she is legally obligated. Currently, a person commits this crime if he or she did so without good cause.

RECEIVING STOLEN PROPERTY (Section 570.080)

The bill revises the penalty for the crime of receiving stolen property, a class A misdemeanor. If the value of the property or services stolen is \$500 but less than \$25,000 or a person physically takes the property from the victim or the property consists of certain specified items, the person will be guilty of a class C felony. The receipt of any item of property or services that exceed \$500 may be considered a separate felony and may be charged in separate counts. Any person with a prior conviction for receiving stolen livestock or captive wildlife who violates those same provisions a subsequent time when the value of the animal stolen exceeds \$3,000 will be guilty of a class B felony and will be required to serve at least 80% of any sentence imposed before he or she is eligible for probation, parole, conditional release, or other early release by the Department of Corrections. Anyone committing an offense in which the value of the property or services is an element will be guilty of a class B felony if the value equals or exceeds \$25,000.

STEALING LEASED OR RENTED PROPERTY OFFENSES (Section 578.150)

The bill revises the crime of failing to return leased or rented property and changes the name of the crime to stealing leased or rented property.

The following actions are added to the list of offenses that constitute the crime if the person commits the offense with the intent to deprive the owner of the property: aiding or abetting the concealment of leased or rented property; selling, encumbering, conveying, pawning, loaning, abandoning, or giving away the leased or rented property without the written consent of the lessor or without informing the person who receives the property that it is subject to a lease; and failing to pay the lease charges and any extensions after returning the property with the intent to deprive the lessor of the agreed upon charges.

Currently, it is evidence of the crime when a person who has

leased or rented property, other than a motor vehicle, fails to return the property 10 days after the owner has sent a written demand by certified or registered mail to the address provided in the lease agreement. The demand must include a statement that the failure to return the property may subject the person to criminal prosecution. The bill specifies that evidence of intent to commit the crime is established if the lessee uses a false; fictitious; or not current name, address, or place of employment in obtaining the property or if the lessee fails or refuses to return the property or pay the lease charges within seven days after a written demand is sent by certified mail, return receipt requested, to the address provided in the lease agreement or the person's last known address.

Currently, failure to return leased or rented property is a class A misdemeanor unless the property is valued at \$500 or more, in which case it is a class C felony. The bill increases the maximum property value so that the crime of stealing leased or rented property becomes a class C felony if the property is valued at \$1,000 or more.

STATE REIMBURSEMENT FOR SHERIFFS (Section 632.312)

A sheriff is allowed to receive reimbursement from the state, subject to appropriation, for the actual costs of transporting a person to and from a mental health facility from a public or private hospital, a nonprofit charitable organization, the state, or a political subdivision.

The bill contains an emergency clause for the provisions regarding the hospital district sales tax.